

A BILL FOR AN ORDINANCE TO AMEND CHAPTER 22, ARTICLE 8 OF THE
KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO PROHIBITING
SMOKING IN DESIGNATED AREAS

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF
HAWAII:

SECTION 1. Findings and Purposes. The Council finds that Article II of the Kauai County Charter 1984, as amended, provides that County powers shall be used to promote, inter alia, the general welfare and the safety, health, peace, good order, and comfort of its inhabitants.

The Council also finds that there is a compelling public health and safety need to protect nonsmoking employees and the general public from the hazardous effects of exposure to environmental tobacco smoke (ETS), often called “second-hand smoke,” in workplaces and other places, in addition to protecting the public from smoking in those areas of County properties where smoking is already prohibited pursuant to Chapter 22, Article 8, Kauai County Code, 1987, as amended and Haw, Rev. Stat. Chapter 328K.

ETS is the complex mixture formed from the escaping smoke of tobacco products and smoke inhaled by the smoker. In comprehensive reviews published by the U.S. Surgeon General, the U.S. Environmental Protection Agency, and the National Research Council, ETS exposure has been found to be causally associated with a number of adverse health effects including lung cancer, childhood asthma and lower respiratory tract infections.

While State law, Haw. Rev. Stat. chapter 328K, prohibits smoking in most areas that are open to the public, the Council finds that nonsmokers should have greater protection against ETS in most areas of the County of Kauai. Accordingly, pursuant to the grant of power in Article II of the Kauai County Charter, the purpose of this ordinance is to extend the prohibitions against smoking in Chapter 22, Article 8, Kauai County Code, 1987, as amended, to additional areas of the County of Kauai.

In light of the preceding findings and purpose, the terms of this Article shall be liberally construed to achieve the purposes stated in this section.

SECTION 2. Chapter 22, Article 8 of the Kauai County Code, 1987, as amended, is amended in its entirety to read as follows:

**"ARTICLE 8. PROHIBITION OF SMOKING IN [DESIGNATED]
CERTAIN AREAS**

[Sec. 22-8.1 Declaration Of Legislative Intent and Purpose.

The Council desires to protect the health, comfort and safety of the residents of the County of Kauai attending public meetings and activities, transacting business and visiting within premises under the jurisdiction and control of the County of Kauai. Therefore, pursuant to the power granted in Article II of the County Charter and Section 62-34, H.R.S., to protect health, life and property and to protect the general welfare and safety of the inhabitants of the County, this Article prohibiting smoking and carrying of lighted objects in certain designated areas in the County is enacted to insure that smoking and carrying of lighted objects in the designated areas will cease. The terms of this Article shall be liberally construed to effectuate the purpose stated in this Section.

Sec. 22-8.2 Smoking Prohibited In Certain Areas.

No person shall smoke or carry a lighted cigar, cigarette, pipe or match, or use any spark, flame or fire-producing device in any of the following places owned or operated by the County of Kauai:

1. Meeting or conference rooms where ten (10) or more persons are gathered.
2. Auditorium or sports area that is enclosed.
3. Community centers where ten (10) or more persons are gathered for meetings, parties, or any other purpose where the area is enclosed.

Sec. 22-8.3 Exceptions.

This Article shall not apply to:

1. Smoking rooms or restrooms.
2. Any area that is not enclosed.
3. The lobby of the KWMCH during intermissions of stage performances or when the auditorium is occupied or in use.
4. Performers upon the stage when the conduct prohibited by this Article is part of any theatrical production.

Sec. 22-8.4 Signs.

- a. All areas within buildings and enclosed facilities where this Article is applicable shall conspicuously display a sign reading “Smoking Prohibited By Law.”
- b. This Article shall apply only where the area is properly placarded as provided by Subsection (a) of this Section.
- c. The Fire Chief shall have the authority to order “Smoking Prohibited By Law” signs erected in any building or enclosed area of public assemblage owned or operated by the County of Kauai when in his opinion to do so would promote the public health, welfare and safety.
- d. The removal, destruction, damaging or defacing of any sign authorized by this Section by any person is prohibited.

Sec. 22-8.5 Enforcement.

For any violation of any of the provisions of this Article it shall be the duty of any police officer and any person authorized by the Chief of Police or Fire Chief to issue a summons or citation to any person charged with the responsibility of complying with the provisions of this Article. The summons or citation shall instruct the person to report at the Violation Bureau and post an appearance bond in the amounts as may be set by the judge of the District Courts, for appearance on the date as may be set for the person to appear before the District Court. Upon failure to appear upon the date the appearance bond shall be forfeited.

Sec. 22-8.6 Summons or Citation.

There shall be provided for use by officers and other authorized persons to enforce the provisions of this Article a form of summons or citation for use in citing violators of this Article. The summons or citation shall be printed in a form commensurate with the form of other summonses or citations appropriate for violations, so designated to include all necessary information to make the summons or citation valid and legal within the laws of the State of Hawaii and the County of Kauai. Every summons or citation shall be consecutively numbered and each carbon copy shall bear the number of its respective original.

Sec. 22-8.7 Failure to Obey Summons Or Citation.

It shall be unlawful for any person to fail to appear at the place and within the time specified in the summons or citation issued to him by a police officer or other authorized person for any violation of any section of this Article, regardless of the disposition of the violation for which he was originally cited.

Sec. 22-8.8 Issuance Of Complaint; When.

If any person fails to comply with a summons or citation issued to him or if any person fails or refuses to deposit bond as required and within the time permitted, the police shall have a complaint entered against the person and secure the issuance of a warrant for his arrest.

Sec. 22-8.9 Penalty.

Any person convicted of violating any provision of this Article shall be punished by a fine not exceeding Fifteen Dollars (\$15) for each offense.]

Sec. 22-8.1 Definitions

“Bar” means a place devoted to the serving of alcoholic beverages for on-site consumption by patrons and where the service of food is only incidental to the consumption of alcoholic beverages, and where the bar submits to the County Department of Liquor Control records necessary, in the Liquor Department's judgement, to establish gross sales of food and alcoholic beverages for the prior calendar year. “Incidental” means that, for the prior calendar year, gross sales of food are less than one-third (1/3) of gross sales of alcoholic beverages. The Department of Liquor Control shall have the power to adopt administrative rules necessary to carry out the provisions of this definition.

“Commercial building” means a building occupied by two or more commercial tenants, but does not include bars.

“Hotel” shall have the meaning ascribed to it in K.C.C. Sec. 8-1.5 of the Comprehensive Zoning Ordinance for the County of Kauai.

“H.R.S.” means Haw. Rev. Stat., as amended.

“K.C.C.” means the Kauai County Code 1987, as amended.

“Multifamily dwelling” shall have the same meaning as the term “dwelling, multi-family” in K.C.C. Sec. 8-1.5 of the Comprehensive Zoning Ordinance for the County of Kauai.

“Nightclub” means a bar in which live entertainment or recorded music is provided and in which facilities for dancing by the patrons are provided.

“Open to the public” means areas within any building available for use by or accessible to the general public during the normal course of business conducted therein by either private or public entities.

“Restaurant” means any retail eating establishment where food is served or provided for on-site consumption by seated patrons that is authorized by the state department of health to operate as a food establishment, including any private food establishment or club in which only members or their guests are permitted, but excluding a “bar”. If a restaurant includes an area devoted to the serving of alcoholic beverages, that area shall be deemed part of the “restaurant”, and not a separate “bar”, under this Article. An establishment that is a “restaurant” shall have that status during all hours of its operation, except as otherwise defined in this Article as a "Part-time Restaurant/Bar."

"Part-time Restaurant/Bar" means an establishment that changes its use from that of a restaurant to a bar during a specified, posted time during its hours of operation. Signs shall be posted to indicate its hours of operation in which it serves as a restaurant and as a bar. Smoking shall be permitted only during the specified time the establishment operates as a bar. The hours of operation that the establishment operates as a bar shall be filed with the Department of Liquor Control.

“Retail store” means any establishment organized for retailing goods including, but not limited to, food and grocery stores.

"Separate open air area" means an area that is exposed to the environment by not more than three sides, and which may include, but not be limited to, pool areas and lobbies.

“Separate open air area of a restaurant” means areas, roofed or not, of a restaurant’s premises where food and/or beverages are served that is separate from the main dining area that are exposed or open to the outside environment and include, but are not limited to, outdoor patios [of the restaurant’s premises and exposed, outdoor areas on a restaurant’s premises that abut indoor areas of the restaurant.], lanais, gazebos, umbrella tables and other outdoor seating areas. An area is determined to be exposed or open if it is unenclosed or enclosed on at least three (3) sides by a barrier or wall of not more than four (4) feet high from the floor, or if the net area of the walls on each of the three (3) sides have a fifty percent (50%) or greater opening, provided that any barrier or wall shall not exceed four (4) feet in height from the floor. At least ten (10) feet of space shall separate the tables within the main dining area where no smoking is allowed and the separate open air area of a restaurant where smoking is allowed.

"Small business" means those business establishments having not more than five employees working on the business premises per established workshift, excluding restaurants.

“Smoke” or “smoking” means inhaling or exhaling the fumes of tobacco or any other plant material, or burning or carrying any lighted smoking equipment for tobacco or any other plant material; the personal habit commonly known as

smoking, including smoking cigarettes, cigars, and pipe smoking.

Sec. 22-8.2 Smoking Prohibited In Certain Areas.

Except as otherwise provided in Chapter 22, Article 8, smoking shall be prohibited in the following places within the County of Kauai:

- a. Any restaurant, except as defined as a "Part-time Restaurant/Bar", only when operating as a bar, and a "separate open air area of a restaurant" in this Article.
- b. Elevators in buildings generally open to and used by the public, including elevators in apartment and other multi-unit residential buildings.
- c. Patient rooms, wards, waiting rooms, lobbies and public hallways of public and private health care facilities including, but not limited to, hospitals, clinics, and physicians' and dentists' offices.
- d. Any room which is primarily used for exhibiting any motion picture, stage drama, dance, musical performance or other similar performance during the time that the room, hall or auditorium is open to the public for such exhibitions.
- e. Museums, libraries and galleries.
- f. Any enclosed or partially enclosed area or building owned, leased, operated, or maintained by the County, except any dwelling unit. As used in this paragraph (f), "dwelling unit" shall have the meaning ascribed to it in K.C.C. Sec. 8 1.5 of the Comprehensive Zoning Ordinance for the County of Kauai.

In addition to those buildings owned, leased, operated, or maintained by the County where smoking is prohibited under this paragraph (f), the Fire Chief may prohibit smoking in any other building or enclosed area of public assemblage owned or operated by the County of Kauai when in his opinion to do so would promote the public health, welfare or safety. The Fire Chief may exercise his or her authority to prohibit smoking by posting signage pursuant to Sec. 22-8.4 (c).

- g. Except as provided in Sec. 22-8.3 or as limited by this paragraph (g), all areas in business or charitable establishments. For purposes of this paragraph (g), a "business" means any sole proprietorship, partnership, joint venture, business trust, limited liability company, business corporation, professional corporation, or other business entity formed for profit-making purposes, and "business establishment" includes, but is not limited to, any of the following establishments operated by a business:

1. Any school;

2. Any hotel, except individual hotel rooms, separate open air areas, and bars;
3. Any financial institution;
4. Any industrial, commercial or wholesale establishment;
5. Any utility;
6. Any retail establishment where goods or services are sold, leased or otherwise provided to the public or to another business including, but not limited to, food and grocery stores;
7. Any restaurant; provided that smoking shall be permitted in a restaurant under the following circumstances:

Smoking shall be permitted in a separate open air area of a restaurant when the business operating the restaurant refrains from designating the area as nonsmoking pursuant to paragraph (i) of this Sec. 22 8.2.
- h. Rest rooms. Any rest room open to the public in places specified in this section.
- i. Notwithstanding Sec. 22-8.3, any area of any bar, hotel room, nightclub, or governmental property which has been designated by the owner, operator, manager or other persons having control of such property as a nonsmoking area and marked with a "no smoking" sign or signs.
- j. All enclosed or partially enclosed areas within multifamily dwellings that are open to the common use of all unit owners or residents including, but not limited to, lobbies, hallways, corridors, stairways, waiting areas, and recreation areas within multifamily dwellings. For purposes of this paragraph (j), "enclosed or partially enclosed areas" means areas closed in by a roof or overhang and at least one wall. An area commonly described as a lobby or roofed mall shall be deemed enclosed or partially enclosed for purposes of this paragraph.
- k. All enclosed or partially enclosed areas within commercial buildings not subject to the exclusive use and possession of a tenant and open to the common use of the tenants of the building and their employees and customers including, but not limited to, common entrance areas, lobbies, malls, hallways, corridors, escalators, stairways, and waiting or rest areas within commercial buildings.
- l. In the event the building is both a multifamily dwelling and a commercial building, all areas except for private residences.
- m. All areas within recreation areas or facilities under the maintenance of the Department of Public Works' Division of Parks and Recreation, except such areas within each area or facility as the department may, with the approval of the fire chief as to facilities, designate by appropriate signs as areas within which smoking is permitted.

County parks shall not constitute “recreation areas or facilities” within the meaning of this paragraph (m).

- n. Any child care, adult day care or health care facility.

Sec. 22-8.3 Exceptions.

Smoking shall not be prohibited in the following places:

- a. Any bar;
- b. Private residences, except when used as a child care, adult care or health care facility;
- c. Any property owned, controlled or leased by state or federal government entities;
- d. Any hotel room;
- e. Small businesses, excluding restaurants;
- f. "Part-time Restaurant/Bar" only during the posted, specific time the establishment operates as a bar;
- g. Separate open air area of a restaurant.

Sec. 22-8.4 Signs.

- a. Clearly legible signs which include the words “Smoking Prohibited by Law” with letters of not less than one inch in height shall be conspicuously posted in all places where smoking is prohibited under this Chapter 22, Article 8. The signs shall be posted by the owner, operator, manager or other person having control of such places. Alternative means of notification (individual place cards, film clips, etc.) may be employed if the effect thereof is equivalent to the notice given by the signs described in the preceding sentence.
- b. In the case of any "Part-time Restaurant/Bar" which permits smoking during the hours the establishment operates as a bar, the owner, operator, manager, or other person having control of the establishment shall post a clearly legible sign with letters of not less than one-inch in height, stating "SMOKING PROHIBITED BY LAW EXCEPT DURING THE HOURS OF _____ TO _____, WHEN OPERATING AS A BAR ONLY." This

sign shall be conspicuously posted at all entrances normally used by the public.

- c. The Fire Chief shall exercise his or her authority to prohibit smoking pursuant to Sec. 22-8.2(f) by ordering that "Smoking Prohibited By Law" signs be erected in any such building or enclosed area of public assemblage.
- d. The removal, destruction, damaging or defacing of any sign authorized by this section by any person shall constitute a violation of this section.
- e. Any person violating the provisions of this section shall be issued a notice of violation and shall comply with the provisions of this section within ten (10) working days from the date of the issuance of the notice of violation. Thereafter, the penalty provisions of Sec. 22-8.5 shall apply.

Section 22-8.5 Violation—Penalty.

- a. It is unlawful for any person to smoke in a place within the County of Kauai where smoking is prohibited.
- b. Except as otherwise provided in this Chapter 22, Article 8, any person violating any provision of this Article shall be punished by a fine of \$50 per calendar day for each violation. Each day that the non-compliance exists shall constitute a separate violation. Each violation shall constitute a separate offense.

Sec. 22-8.6 Enforcement --Administration.

- a. Summons or Citation.
 - 1. There shall be provided for use by an officer or employee of the county duly authorized to issue a summons or citation, or any police officer, a form of summons or citation for use in citing violators of this Article which does not provide for the physical arrest of such violators. The form and content of such summons or citation shall be as adopted or prescribed by the administrative judge of the district court, shall be printed on a form commensurate with the form of other summons or citations used in modern methods of arrest, and so designed to include all necessary information to make the same valid within the laws and rules of the State of Hawaii and the County of Kauai.

2. In every case, when a citation is issued, the original of the same shall be given to the violator; provided that the administrative judge of the district court may prescribe that the violator be given a carbon copy of the citation and provide for the disposition of the original and any other copies.
 3. Every citation shall be numbered, and each carbon copy shall bear the same number as its original.
- b. Enforcement and administration of the provisions of Sec. 22-8.4 shall be under the jurisdiction of the Department of Public Works' Building Division. The Building Division shall have the power to formulate any applicable rules necessary to carry out the provisions of Sec. 22-8.4.
 - c. Except as provided in paragraph (b) of this Sec. 22-8.6, enforcement of this article shall be the responsibility and be under the jurisdiction of the Kauai Police Department.
 - d. In addition to the foregoing, any police officer or other officer or employee of the county duly authorized to issue a summons or citation may eject from the premises any person to whom a citation has been issued and who continues to smoke after the person has been requested by the police officer or other duly authorized officer or employee to stop smoking.

Sec. 22-8.7 Fire Code.

Nothing in this Chapter 22, Article 8 shall be construed as superseding applicable fire code provisions in the Kauai County Code. Where conflicts between the provisions of this Chapter 22, Article 8 and the fire code exist or arise, the fire code provisions shall prevail and control.

Sec. 22-8.8 Severability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

Sec. 22-8.9 Conflict with H.R.S. Chapter 328K.

- a. If any provision of this Article conflicts with any provision of Part I of H.R.S. Chapter 328K, or any successor statute, the more stringent provision shall prevail and control.
- b. If any violation of this Article also constitutes a violation of H.R.S. Chapter 328K, or any successor statute, the violator shall be subject to the penalties and procedures set forth under this Article.
- c. This section shall not be deemed to limit the powers granted to the county under H.R.S. Sec. 328K-5(g) or any successor statute, to enforce, administer, and adopt rules necessary to carry out H.R.S. Sec. 328K-4, or any successor statute.

Sec. 22-8.10 Mandatory Review.

A mandatory review shall be held on this article 12 months after its effective date."

SECTION 3. If any provision of this ordinance, or the application thereof to any person or circumstances is held invalid, the invalidity does not affect the other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 4. This ordinance shall take effect on January 1, 2003.

INTRODUCED BY: /s/ JAMES KUNANE TOKIOKA

DATE OF INTRODUCTION:

July 25, 2002

Lihue, Kauai, Hawaii

Adopted by the County Council: October 24, 2002

Signed by Mayor Maryanne W. Kusaka: November 7, 2002